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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 267 of 2007

Petitioner		Hari Shankar Lahare, S/o Shri Shambhudayal Lahare, Aged about 39 years, Sarpanch, Gram Panchayat Samesar, Tehsil Navagarh, District Durg (C.G.)
	Versus-	
Respondents	1.	State of Chhattisgarh, Through: The Secretary, Department of Panchayat and Social Welfare Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
	2.	Rajkumar Didore, S/o- Padum Lal Didore, 30 yrs. R/o. Village Cheetapar, Post & Tehsil Navagarh, District Durg (C.G.)
	3.	The Specified Officer Cum Sub Divisional Officer, Bemetara, District Durg (C.G.)
	4.	Girwar Singh, S/O Shri Thanwar, 61 years, R/O Vill. Kapri The. Navagarh, Distt. Durg (C.G.)
	5.	Dauram Banjare, S/O Milauram, 50 years, R/O Vill. Kapri The. Navagarh, Distt. Durg (C.G.)
	6.	Dinesh Kumar, S/O Shri Puhupdas, 37 years, R/O Vill. Cheetapar, The. Navagarh, Distt. Durg (C.G.)
	7.	Deepak Kumar, S/O Bansilal Banjare, 30 years, R/O Vill. Kapri, The. Navagarh, Distt. Durg (C.G.)
	8.	Maniram, S/O Shankar Jogi, 32 years, R/O Vill. Cheetapur The. Navagarh, Distt. Durg (C.G.)
	9.	Milauram, S/O Santuram Sahu, 50 years, R/O vill. Samesar, The. Navagarh, Distt. Durg (C.G.)
	10.	Ramdas Manikpuri, S/O Guhadas Manikpuri, 35 yrs. R/o Vill. Samesar The. Navagarh, Distt. Durg (C.G.)
	11.	Ramratan, S/O Bhakla Chaturvedi, 32 yrs. R/O Vill. Cheetapur, The. Navagarh, Distt. Durg (C.G.)
	12.	Shiv Kumar, S/O Sunderdas Vaishnav, 35 yrs. R/O Vill. Samesar, The. Navagarh, Distt. Durg (C.G.)
	13.	Shri M.L.Gupta, Returning Officer, Block Navagarh Distt. Durg.
	14.	Shri D.S.Ratre, Instructing Officer, I.T.I. Bemetra, Distt. Durg (C.G.)
	15.	Shri B.R.Soni, Instructing Officer, I.T.I. Bemetra, Distt. Durg (C.G.)

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16. Shri B.R.Thakur, S.D.O. cum Specified Officer, Bemetra, Distt. Durg (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

(SB: Hon'ble Mr. Justice **Satish K. Agnihotri**)

Shri Prafull Bharat, Advocate for the petitioner.

Shri Yashwant Singh Thakur, Govt. Advocate for the respondents No. 1 and 3.

Shri S. C. Verma, Advocate for the respondent No. 2.

None for the other respondents.

ORDER

(Passed on this 17th day of July, 2007)

1. The petitioner has filed this petition challenging the order dated 6.2.2007 (Annexure P/13) passed by the respondent No.3/Specified Officer – cum- Sub Divisional Officer, Bemetera, District – Durg in Case No. 32-C/144 year 2004-05 (Rajkumar Dindore Vs. Harishankar Lahre & others).
2. The petitioner was elected as Sarpanch of Gram Panchayat – Samesar, Tahsil – Navagarh, District – Durg in the election held on 15.1.2005. The respondent No.2, a rival candidate, filed election petition before the respondent No.3 making allegations with regard to the counting of votes. The respondent No.3 vide order dated 31.1.2007 (Annexure P/11) directed recounting of votes. Being aggrieved the petitioner filed Writ Petition (C) No. 214 of 2007, wherein this Court after having observed that the evidence of both the parties have been recorded by the Specified Officer, the Specified Officer instead of passing the final order, directed recounting of votes, came to the conclusion that the impugned order

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passed by the Specified Officer on 31.1.2007 for recounting of votes was a non-speaking order and not a valid order. Thus, this Court vide order dated 6.2.2007 (Annexure P/12) set aside the order dated 31.1.2007 passed by the Specified Officer.

3. In the meantime, the Specified Officer, on the basis of the order dated 31.1.2007 proceeded with the recounting of votes and declared the result on 7.2.2007 (Annexure P/14) whereby the respondent No.2 was declared as elected by the margin of one vote.
4. Be that as it may, since the order dated 31.1.2007 passed by the Specified Officer has been quashed, no recounting of votes could have been done on the basis of the order dated 31.1.2007. Thus, the recounting of votes held on 6.2.2007 is without any authority, hence the same is declared as invalid and is quashed.
5. Shri S. C. Verma, learned counsel appearing for the respondent No.2 in all fairness submits that the recounting of votes on 6.2.2007 was pursuant to the order dated 31.1.2007, which could not have been done in view of the order dated 6.2.2007 passed by this Court in Writ Petition (C) No. 214 of 2007.
6. Learned counsel appearing for the respondent No.2 agrees with the submission of learned counsel appearing for the petitioner that the Specified Officer, after hearing both the parties can decide the case afresh as to whether the recounting of votes is necessary or not.
7. Admittedly, the evidence of both the parties have been recorded by the Specified Officer, thus it is not necessary to examine again the witnesses afresh.
8. Learned counsel appearing for both the parties submit that the fresh hearing of the matter be done by some other officer, not by the earlier officer, who had passed the orders dated 31.I7.2007 and 6.2.2007. In view of the agreement of both the parties, the

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respondent No.1 is directed to take appropriate steps and nominate the Specified Officer, accordingly, at the earliest.

9. The Specified Officer-cum-Sub Divisional Officer is accordingly directed to hear the matter afresh after affording an opportunity of hearing to all the parties concerned and pass a fresh order on merit.

10. Since the matter has been pending for more than six months, it is desirable in the interest of justice that the matter be considered and disposed of as expeditiously as possible, preferably within a period of six weeks from the date of nomination of the Specified Officer by the respondent No.1 to hear the matter.

11. With the above directions this petition stands disposed of finally. No order as to costs.

Certified copy, as per Rules.

Sd/-
Satish K. Agnihotri
Judge

Thakur